

# COMPARATIVE DOG LAW: US AND HUNGARY

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## INTRODUCTION

In Hungary animal law, and as part of animal law so called "dog law" has changed in the last few years. In my opinion, Hungarian legislators and regulators would do a good job if they would take into consideration the lesson to be learned from the practice of other jurisdictions, in particular those having a great deal of experience in this field of law. In this paper, I wish to examine from this point of view a small part of animal protection law, namely the "dog law" in the United States. I think, there are a host of things to learned from the US laws, and it would be most advisable to borrow a lot of things from the regulations in reforming Hungarian dog law. I will select a few of them in the following.

## DOG LICENCING

In the United States most animal law is to a large extent local: it consists largely of city and county regulations. Even the part of the law the States is slight, though growing, while the federal law has hardly anything to do with it at all.<sup>1</sup> Still, there is a great similarity in local regulations. Thus, practically everybody living in the United States and having a dog has to obtain a licence to keep his/her dog. Almost all laws require not only to buy a licence every year, but also to keep the licence tag on the dog at all time. This has a practical reason: the tag is often the only way for animal control officials to identify a dog they pick up, or that someone turns over to the animal shelter. In most places, annual licence fees are between \$ 10 and \$ 20. Almost everywhere fees are higher for animals that have not spayed or neutered.<sup>2</sup> Dog licensing is, for all practical purposes, a sort of dog tax.

Several factors may reduce the fee dog owners have to pay:

- Licenses for specially trained guide, signal, or service dogs that help their disable owners are usually free of charge.
- Disabled or elder people are sometimes give free dog licenses. Some cities also require that household income be below a certain amount.
- In some cities dog owners are able to buy a "lifetime license", valid for the dog's lifetime. For instance, in Pennsylvania such a license is available if the dog has some kind of permanent identification mark, such as a tattoo or microchip.<sup>3</sup>
- If someone has a lot of dogs, than the owner may be able to (or be required to) get a kennel license that covers all the dogs - a sort of volume discount.<sup>4</sup>

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<sup>1</sup> RANDOLPH, Mary: Every Dogs Legal Guide, Nolo, California, 2007, 2.

<sup>2</sup> RANDOLPH, Mary: Every Dogs Legal Guide, Nolo, California, 2007, 19.

<sup>3</sup> 3 Pa. Cons. Stat. Ann. § 459-201. RANDOLPH, Mary: Every Dogs Legal Guide, Nolo, California, 2007, 40.

<sup>4</sup> RANDOLPH, Mary: Every Dogs Legal Guide, Nolo, California, 2007, 20.

In Hungary the laws are, in their effect, quite similar. Local authorities may, if they decide so collect "dog tax", since the 1st of January 2012. As a matter of fact, most local authorities did not do so, for the time being. The tax rate is similar to that of in the United States, of course in Hungarian currency (a few thousand Forints yearly). The Hungarian Animal Protection Act<sup>5</sup> contains certain compulsory immunities from the tax.<sup>6</sup> These are binding for local governments, but they can add others. The few municipalities that adopted local dog tax in fact broadened the reductions and immunities.<sup>7</sup>

In the United States dog licencing is very important. If someone's dog bothers the neighbours, is lost, stolen or nabbed by animal control, or bites anyone, the penalty for not having a dog licence is bigger than the price of buying one. When a licenced dog is picked up and impounded by animal control personnel, they can check the city's licence records to identify -and notify the owner. Dogs without licence are often euthanized sooner than dogs with licence tag. It's also still fairly common to find legislation that makes stealing only licenced dogs a crime - implying that stealing an unlicenced dog is legal.<sup>8</sup> In Hungarian legal regulation, there is not a dog licencing system, but owners are obliged to let a microchip inserted under the skin of the dog by an appointed veterinarian. The chip serves to identify the dog for every occasion, if necessary. Still, under Hungarian law the microchip is not a legal proof of the ownership. In any case, if the chip is missing the fine much is bigger than the cost of the chip.

## DOG NUMBER RESTRICTION

An other problem both in the United States and in Hungary the dog number restriction. In the United States cities and towns may enact laws that restrict the number and types of animals a person may own. This is done to protect property owners from nuisances (unlawful interference with the use and enjoyment of a person's land), such as unpleasant odours and noise made by animals. Pet owners feel that such restrictions violate their property rights, as pets are considered personal property by law. Pet owners also argue that limiting the number of pets does not necessarily decrease any nuisance to other residents. Ordinances that state a certain number of animals are a nuisance must show a nuisance actually exists, or they may be struck down.<sup>9</sup> Laws that limit the number of pets one may own are upheld by the courts, if they are rationally related to furthering the goals of protecting the public health, safety, and welfare. In contrast laws, that restrict ownership based on specific characteristics of pets, such as weight, may not be upheld because weight may change.<sup>10</sup> In the United States many cities allow to two or three dogs per household, not counting puppies under a certain age, usually eight

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<sup>5</sup> 1998. évi XXVIII. törvény az állatok védelméről és kíméletéről

<sup>6</sup> JÁMBOR, Adrienn: "Ebadó" és ebösszeírás, Sectio Juridica et Politica, Tomus XXXI. 2013, 211-212.

<sup>7</sup> See an example: JÁMBOR, Adrienn: "Ebadó" és ebösszeírás, Sectio Juridica et Politica, Tomus XXXI. 2013, 214.

<sup>8</sup> For example in Michigan. RANDOLPH, Mary: Every Dogs Legal Guide, Nolo, California, 2007, 21.

<sup>9</sup> HODGES, Cynthia: Ordinances for Pet Number Restrictions, 2010, Available at: <http://www.animallaw.info/topics/tabbed%20topic%20page/spusdognumber.htm> (5 January 2014)

<sup>10</sup> HODGES, Cynthia: Ordinances for Pet Number Restrictions, 2010, Available at: <http://www.animallaw.info/topics/tabbed%20topic%20page/spusdognumber.htm> (5 January 2014)

weeks to four months or so. The goal is to cut down on the problems that dogs cause in urban areas. As one court upholding such an ordinance put it, "too many dogs in too small a space may produce noise, odour and other conditions adverse to the best interests of the community as a whole."<sup>11</sup> Legal challenges to such ordinances almost always fail, but there are exceptions. For instance, a county judge in Minnesota ruled that a Sauk Rapids ordinance limiting dog ownership was invalid because it wasn't based on any supporting facts.<sup>12</sup> Further, in Georgia the Supreme Court found a county ordinance unconstitutional because it did not include the criteria that a dog owner had to satisfy in order to get a permit for keeping more than four dogs.<sup>13</sup> Dog owners violating the law will probably earn a fine and possibly even a jail sentence. Flat limits on the number of dogs per household are increasingly popular but are by no means universal in the United States. In Oakland, California, dog owners banded together to defeat a proposed ordinance that would have required people with more than three pets to get a city permit. The pet owners were supported by the Oakland Society for the Prevention of Cruelty to Animals and a local American Civil Liberties Union Chapter. There are variations on this kind of straightforward limit. Dog owners, for example have to get a special kennel licence if they have more than three or four dogs. That means extra fees, rules and, often inspections by city officials.<sup>14</sup>

Ordinances that impose criminal penalties for violations are interpreted by courts in favour of pet owners. In addition, pet owners may be able to use zoning laws as a defense against prosecution. For example, if the pet owner can show that he owned a certain number or type of animals before the pet ownership law was enacted, then his situation could be considered a prior non-conforming use. However, once an ordinance is enacted that changes a once lawful activity into an unlawful nuisance, the prior lawful use must stop, or the pet owner may be charged with a violation.<sup>15</sup>

Even if a city does not limit the number of animals, neighbours bothered by the too many animals may seek remedy under ordinary tort law. If the court decides that the animals are a nuisance - that is, that they interfere with neighbours' enjoyment of their property - the owner may be ordered to get rid of some animals.<sup>16</sup>

In Hungary too, the dog-number restrictions have also caused a lot of trouble for dog keepers. Local authorities almost in every city and village restricted the number of dogs per household. Until 2010, there was no higher-level legal regulation about keeping dogs and other pets. In 2010 a government ordinance regulating the keeping of companion animals was issued,<sup>17</sup> practically the first comprehensive

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<sup>11</sup> *Zageris v. City of Whitehall*, 72 Ohio App. 3d 178, 594 N.E.2d 129 (1991), quoting *Downing v. Cook*, 69 Ohio St. 2d 149, 431 N.E.2d (1982) RANDOLPH, Mary: Every Dogs Legal Guide, Nolo, California, 2007, 40.

<sup>12</sup> For example see: *Ramm v. City of Seattle*, 66 Wash. App. 15, 830 P.2d 395 (1992) *Gates v. City of Sanford*, 566 So. 2d 47, rev. dis. 576 So. 2d 287 (Fla. App. 1990). RANDOLPH, Mary: Every Dogs Legal Guide, Nolo, California, 2007, 40.

<sup>13</sup> *Foster v. State*, No. S00A2054 (Sup. Ct. Ga. Mar., 19, 2001). RANDOLPH, Mary: Every Dogs Legal Guide, Nolo, California, 2007, 40.

<sup>14</sup> RANDOLPH, Mary: Every Dogs Legal Guide, Nolo, California, 2007, 22.

<sup>15</sup> HODGES, Cynthia: Ordinances for Pet Number Restrictions, 2010, Available at: <http://www.animallaw.info/topics/tabbed%20topic%20page/spusdognumber.htm> (5 January 2014)

<sup>16</sup> RANDOLPH, Mary: Every Dogs Legal Guide, Nolo, California, 2007, 23.

<sup>17</sup> 41/2010. (II. 26.) Korm. rendelet a kedvtelésből tartott állatok tartásáról és forgalmazásáról

legal regulation in this field; it did not contain any restriction of the number of pets to kept in a household. On the other hand, it prescribed minimal space (10 qms) to be available to each dog kept in a household. In 2011 Hungarian Constitutional Court declared unconstitutional a local government decree restricting the number of dogs per household.<sup>18</sup> By the justification of the Constitutional Court is unconstitutional if local government decree is opposite to higher-level law. The local government decree examined by Constitutional Court was opposite to Government decree. By this reason, the Constitutional Court declared unconstitutional and avoid it.

## LEASH LAWS

In the United States many people assume that their state has a mandatory leash law, while in truth only a few states have any leash requirements. While leash laws at the state level are few and far between, many states have impound laws for loose dogs. Indeed, a state may not require that owners put leashes on their dogs, but dogs found roaming loose may be subject to impoundment or even be killed on sight. Only two states, Michigan and Pennsylvania, have laws that address some form of control or restraint for all dogs. Other states indirectly mandate restraint for dogs by outlawing loose dogs (often called "dogs at large"). State may give municipalities the right to adopt referendum or ordinances that require leashes. Other state laws require that dogs be leashed in specific locations, such as beaches, parks, schools, and protected natural areas. Some states may require that dogs only be restrained during certain times, such as between sunset and sunrise, or when a female dog is in heat. Many states have adopted comprehensive codes for the regulation of dogs that are deemed "dangerous" or "vicious".<sup>19</sup>

In the United State "Leash laws" generally require dogs to be on a leash and under control whenever they're off their owners property, unless a specific area is designated for unleashed dogs. Some laws apply only at night (when dogs may form packs and do the most damage to livestock) or allow an owner to have a dog unleashed if it is under "reasonable control".<sup>20</sup>

Even dog owners who let their dogs off leash only because they' are confident they have complete control over them, are probably in violation of a leash law. The intensity of enforcement, however, varies from city to city. In many places, an owner is unlikely to be cited if the dog really is under voice control and not bothering anyone, even if in technical violation of a leash law. But in some cities, police enforce leash laws strictly, especially if they have received complaints about unleashed dogs in a certain area.<sup>21</sup> Across the country, dog owners' groups, frustrated by strict leash laws, are championing city parks with areas set aside just for dogs. The idea seems to have originated in Berkeley, California, where a fenced half-acre of Ohlone Park set aside for dogs in 1979. The Ohlone Park Dog Owner

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<sup>18</sup> 141/2011 (XII. 04) AB Decision

<sup>19</sup> WISCH, Rebecca F.: State Dog Leash Laws, 2012, Available at: <http://www.animalaw.info/topics/tabbed%20topic%20page/spusdogleash.htm> (5 January 2014)

<sup>20</sup> For example, 3 Pa. Const. Stat. Ann. § 459-305. RANDOLPH, Mary: Every Dogs Legal Guide, Nolo, California, 2007, 40.

<sup>21</sup> RANDOLPH, Mary: Every Dogs Legal Guide, Nolo, California, 2007, 25.

Association, now a nonprofit corporation, still oversees the park. Like other such groups, it encourages owners to clean up after their dogs and provides plastic bags near trash cans.<sup>22</sup>

A dog running loose can be picked up and taken to the animal shelter by municipal or country animal control officers. The owner will be fined and charged for the cost of impounding the dog. If the dog is unlicensed, there will be another fine as well.<sup>23</sup>

In Hungary, the legal regulation is partly similar. If a dog running far, the animal control officers of local authorities can take the dog to animal shelter. But in our country there is no fine in these cases, the owner has to pay only the cost of the keeping. There will be a fine only in case, if the dog hasn't got a microchip, because microchip is obligatory by the law.

In the United States - similarly to Hungary - dogs on or off a leash, are simply not welcome in many places. Usually, taking a dog to a beach, zoo, restaurant, or farm may get dog owners a quick and stern request to leave. State and local dogs ban dogs, for health reasons, from places food is prepared, served, or sold. Some cities also bar dogs from city parks.<sup>24</sup>

If a dog's running at large poses an immediate danger to the public, most courts agree that the government has the power to impound and destroy it, without first notifying the owner. If a dog is in the act of attacking a person or livestock, anyone, including government employees, may lawfully do anything necessary to stop it. Law may not, however, give to the animal control authorities excessive power to act without first trying to notify an animal's owner. For example, an Idaho statute that said that any dog "running at large in territory inhabited by deer" was a nuisance and could be killed by a game warden was ruled unconstitutional by the state supreme court.<sup>25</sup> Similarly, the Michigan Attorney General issued a legal opinion that in the state, animal control officers were not authorized to kill a dog merely, because it was running at large. Only a court could order the dog destroyed.<sup>26</sup> Most courts, then, would rule unconstitutional any law that allows animal control officials to seize or destroy a dog (in its owner possession) without giving its owner notice and a hearing.

Unfortunately, in Hungarian law destroying dog's life is not regulated in detail. In accordance with this, here is no judicial practice neither. In my opinion, this is an important question to be addressed in the future.

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<sup>22</sup> RANDOLPH, Mary: Every Dogs Legal Guide, Nolo, California, 2007, 25.

<sup>23</sup> RANDOLPH, Mary: Every Dogs Legal Guide, Nolo, California, 2007, 26.

<sup>24</sup> RANDOLPH, Mary: Every Dogs Legal Guide, Nolo, California, 2007, 26.

<sup>25</sup> Smith v. Costello, 77 Idaho 205, 290 P.2d 742 (1955) RANDOLPH, Mary: Every Dogs Legal Guide, Nolo, California, 2007, 40.

<sup>26</sup> Op. Mich. Atty. Gen. No. 6024, p. 524 (1982) RANDOLPH, Mary: Every Dogs Legal Guide, Nolo, California, 2007, 40.

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